

STATE OF TEXAS)
) **DEVELOPMENT AGREEMENT**
COUNTY OF EL PASO)

This Agreement is made this ____ day of _____, 2019, by and between **GFA LIMITED PARTNERSHIP, A TEXAS LIMITED PARTNERSHIP**, hereinafter referred to as the "Developer," and the **CITY OF EL PASO**, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the Developer is the owner of a parcel of land containing 4.77 acres, more or less, being a portion of Lot 8, Gateway Estates, El Paso County, Texas, and being more particularly described by the metes and bounds description and survey attached hereto and made part hereof as Exhibit "A" ("Park Site"); and,

WHEREAS, the Developer wishes to dedicate the Park Site to the City for use as a park; and,

WHEREAS, Title 19 (Subdivisions) of the El Paso City Code allows a developer to request that an off-site dedication of parkland be accepted within the corporate limits or within the areas designated within the path of annexation in the city's extraterritorial jurisdiction;

WHEREAS, the Park Site qualifies under the Subdivision Code as an off-site park dedication and is located within Park Zone E-10 and the Gateway Estates Phase III Land Study; and

WHEREAS, once the Park Site is dedicated to the City, the Developer is required to develop the Park Site within two years of the approval of this Development Agreement by the El Paso City Council; and

WHEREAS, the City has negotiated with Developer for the specific improvements for the Park Site and wishes to accept the dedication of land as a park; and

WHEREAS, the El Paso City Plan Commission on _____, 2019, recommended approval of the off-site dedication of the Park Site; and

WHEREAS, the El Paso City Council has approved this agreement (the "Agreement") and has authorized the City Manager to sign this Agreement;

NOW, THEREFORE, the parties hereby agree as follows:

1. **DESCRIPTION:** The Developer, being the owner of the Park Site, hereby agrees to dedicate said Park Site to the City for park purposes.

2. **PARKLAND DEDICATION CREDIT:** The Developer, by this off-site dedication, is hereby granted a 1.61 acre parkland credit for Gateway Estates Unit 1 Replat G and 2.67 acre parkland credit for Gateway Estates #1 Replat H and 0.49 acre parkland credit for parkland dedication applicable toward any subsequent parkland requirement within future

residential development within the Gateway Estates Phase III and IV Land Study, subject to the provisions of the Agreement. All other "Park Sites" shown on the Gateway Estates Phase III and IV Land Study shall not change in size or location as a result of this off-site dedication.

3. **IMPROVEMENTS:** The Park Site shall be improved by the Developer in accordance with current Chapter 19.20.050 standards for deeded parkland as approved by Mayor & Council on June 26, 2018, the most current Design Standards for Construction for park facilities, the "Site Plan" attached hereto as Exhibit "B", the "Cost Estimate" attached hereto as Exhibit "C" (collectively the "Park Improvements"), the requirements of Chapter 19.20, and all other provisions of the Subdivision Ordinance and City Code.

3.1. The Developer must provide improvement plans for the proposed Park Site. Said plans shall be included within the Gateway Estates #1 Replat H subdivision improvement plan submittal.

3.2. Construction of the Park Improvements must be completed within two (2) years of the acceptance of this dedication by City Council and before recording of Gateway Estates #1 Replat G without any time extensions and constructed in accordance to the attached Site Plan and Cost Estimate. Additionally, the park site improvements shall include paving frontage, curbing, gutter and utility extension for all street(s) abutting the outside perimeter of the off-site park.

3.3. Developer is herein authorized to enter the Park Site at any time for the purpose of completing the Park Improvements, as set out in the attached Site Plan and Cost Estimate.

4. **ADJACENT DEVELOPMENT:** Developer agrees to develop any new development abutting the Park Site in accordance with the requirements of Title 19 and all other applicable provisions of the Subdivision Ordinance and all other provisions of the City Code as well El Paso County development requirements as the additional provisions of this Agreement.

4.1. No residential lots shall directly abut the boundary of the Park Site.

5. **CITY'S PARTICIPATION:** The City shall not bear any costs, nor shall the Developer be entitled to any reimbursement of costs, associated with this Agreement.

6. **TITLE, TAXES and CONVEYANCE:** The Developer agrees to pay the cost of providing a title search, preparation of the deed, as well as recording costs for the deed on the Park Site, and further agrees to pay all ad valorem taxes, standby fees and assessments by any taxing authority prorated through the date of acceptance of the deed conveying fee simple title by the City Council. The Developer shall deliver to the Planning and Inspections Department the deed conveying fee simple title of the Park Site in accordance with City Code Chapter 19.20 (Parks and Open Space).

7. **INSURANCE & BOND:** Throughout the time that the Improvements are under construction (the "Construction Period"), Developer shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property

damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

7.1 Bond Required. Pursuant to Texas Local Government Code Section 212.073, Developer must provide a performance bond for the Total Improvement Cost to secure fulfillment of all of Developer's obligations under this Agreement. The bond must be provided prior to the approval of this Agreement and shall be provided to the Deputy Planning Director of the Planning and Inspections Department. The bond shall be in a form approved by the City Attorney's Office. The bond must be executed by a corporate surety in accordance with Texas Government Code Section 2253. The bond shall identify the City as Owner and Obligee and shall bind both Developer's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bond shall expressly provide that Developer's contractor shall faithfully render performance under this Agreement and shall remain in full force and effect until all requirements of the Agreement have been performed to the City's satisfaction.

8. INDEMNIFICATION: DEVELOPER UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES THAT OCCUR DURING THE CONSTRUCTION OF THE IMPROVEMENTS UNDER THIS AGREEMENT.

9. PARKLAND DEDICATION ORDINANCE: All provisions of this Agreement are subject to Title 19 (Subdivisions), Chapter 19.20 (Parks and Open Space) and all other applicable provisions of the Code, and nothing herein is intended to waive or modify any provision of the Code. It is understood, however, that this Agreement may contain provisions requiring the Developer to do more than the Code requires or to receive less parkland credits due to the encumbrance of easements and public right-of-way and the Developer is obligated to comply with such provisions. If any portion of the Park Site is determined to have restrictions limiting recreational use, the determined acreage will be deducted from the credit granted in paragraph 2.

10. SUCCESSORS AND ASSIGNS: All the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

11. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by a written agreement signed by both parties.

12. SEVERABILITY: Every provision of this Agreement is intended to be severable. If any term or provision contained herein is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

13. **LAW GOVERNING CONTRACT:** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

14. **BINDING AGREEMENT:** The individual signing this Agreement, on behalf of the Developer, acknowledges that he or she is authorized to do so, and said individual further warrants that he or she is authorized to commit and bind the Developer to the terms and conditions of this Agreement.

15. **REPRESENTATION OF COUNSEL:** Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

16. **NOTICE:** All notices and communications under this Agreement shall be hand-delivered or mailed, postage pre-paid with proof of delivery, to the representative parties at their respective addresses below, unless and until either party is otherwise notified in writing.

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, TX 79950-1890

GFA, LLC

City of El Paso
Planning and Inspections Department
Attn: Deputy Planning Director
City 3
801 Texas Ave
El Paso, Texas 79901
Tel: (915) 212-1553

1525 Goodyear Drive
El Paso, Texas 79936
(915) 598-1105

17. **WAIVER:** No waiver of any breach or default shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO:

Tomás González
City Manager

APPROVED AS TO FORM:

Russell Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Philip F. Etiwe
Planning and Inspections Department

APPROVED AS TO CONTENT:

Tracy Novak, Director
Parks & Recreation Department

(ACKNOWLEDGEMENT ON FOLLOWING PAGE)

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2019, by TOMÁS GONZÁLEZ as City Manager of THE CITY OF EL PASO, a municipal corporation, on behalf of said corporation.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this ____ day of _____, 2019 by _____ as _____ on behalf of **GFA, LLC**.

GFA, LLC

By: _____
Albert Gamboa, Manager & President

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____ as _____ on behalf of **GFA, LLC**.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:

EXHIBIT "A"

Barragan And Associates Inc.

10950 Pellicano Dr., Building "F", El Paso, Texas 79935 Ph. (915) 591-5709 Fax (915) 591-5706

DESCRIPTION (OFF-SITE PARK)

Description of a 4.77 acre parcel being a portion of Lot 8, Gateway Estates, El Paso County, Texas, according to the Plat thereof recorded in Volume 41, page 13, 13A and 13B, Plat Records of El Paso County, Texas, and being more particularly described as follows:

COMMENCING for reference at found concrete monument in the centerline of Loop 375 (no brass cap) at station 240+24.50 (original 2" pipe McCombs corner) replaced by TxDOT with mkr. & g.p. as noted on TxDOT plans (now obliterated), WHENCE a found 2" iron pipe (Bakers) for the common easterly corner of Sections 12 and 13, Block 79, Township 2, Texas and Pacific Railroad Company Surveys, El Paso County, Texas, bears S 86°56'48" E, a distance of 21,261.20 feet, WHENCE a previously found 1/2" rebar (now obliterated) for the southerly corner of said Gateway Estates, El Paso County, Texas, bears S 86°56'48" E, a distance of 5,309.32 feet; THENCE S 86°56'48" E, along the the southerly line of Gateway Estates, El Paso County, Texas, a distance of 4,493.52 feet to a point; THENCE, N 03°03'12" E, a distance of 1,809.74 feet to a point on the northerly right-of-way line of Amesbury Avenue, WHENCE, the southeasterly corner of Lot 8, Gateway Estates, El Paso County, Texas, bears S 86°56'48" E, a distance of 189.09 feet, and said point also being the POINT OF BEGINNING of this description;

THENCE, N 86°56'48" W (N 89°59'56" W-record), along said northerly right-of-way, a distance of 321.65 feet to a point of curvature;

THENCE, 31.42 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 90°00'32", and a chord which bears N41°56'32"W, a distance of 28.29 feet to a point;

THENCE, N 03°03'44" E, a distance of 465.49 feet to a point of curvature;

THENCE, 31.41 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 89°59'28", and a chord which bears N48°03'28"E, a distance of 28.28 feet to a point;

THENCE, S 86°56'48" E, a distance of 76.78 feet to a point of curvature;

THENCE, 9.59 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 73°12'55", and a chord which bears S73°12'55"E, a distance of 9.49 feet to a point of curvature;

THENCE, 176.82 feet along the arc of a curve to the left, with a radius of 70.00 feet, an interior angle of 144°43'47", and a chord which bears N48°09'05"E, a distance of 133.42 feet to a point of curvature;

THENCE, 10.08 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 28°53'21", and a chord which bears N09°46'08"W, a distance of 9.98 feet to a point of curvature;

THENCE, 49.28 feet along the arc of a curve to the right, with a radius of 373.00 feet, an interior angle of 7°34'10", and a chord which bears N08°27'37"E, a distance of 49.24 feet to a point of curvature;

THENCE, 28.21 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 80°48'30", and a chord which bears N52°38'57"E, a distance of 25.93 feet to a point on the southerly right-of-way line of Serran Avenue;

THENCE, S 86°56'48" E, (S 89°59'56" E-record) along said southerly right-of-way line, a distance of 116.14 feet to a point of curvature;

THENCE, 31.33 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 89°44'57", and a chord which bears S42°04'19"E, a distance of 28.22 feet to a point;

THENCE, S 02°48'09" W, a distance of 632.98 feet to a point of curvature;

Barragan And Associates Inc.

10950 Pellicano Dr., Building "F", El Paso, Texas 79935 Ph. (915) 591-5709 Fax (915) 591-5706

THENCE, 31.50 feet along the arc of a curve to the right, with a radius of 20.00 feet, an interior angle of 90°15'03", and a chord which bears S47°55'41"W, a distance of 28.35 feet to the POINT OF BEGINNING of this easement, and containing in all of 4.77 acres more or less.

NOTES:

1. This property may be subject to easements whether of record or not. No Additional Research was performed by B&A Inc. for any reservations, restrictions, building lines, and or easements which may or may not affect this parcel.
2. Bearings recited are grid bearings derived from RTK observations to the Texas CO-OP Network. Referred to the Texas Coordinate System (NAD 83) Central Zone. Distances are ground distance.
3. This description does not intend to be a subdivision process which may be required by the City of El Paso ordinance, and it is the client's/owner responsibility to comply with this ordinance if it is required.
4. A sketch of even date accompanies this description




Benito Barragan, TX P.L.S 5615,
Barragan and Associates Inc.
November 8, 2018
Gateway Estates Replat "H" Park

EXHIBIT “B”

Site Plan (Waiting for applicant to provide)

EXHIBIT “C”

Cost estimate (Waiting for applicant to provide)

